

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent/Appellee,

v.

**No. CIV 09-0315 LH/LAM
CR 06-2263 LH**

OSCAR PROVENCIO-SANDOVAL,

Defendant/Movant/Appellant.

ORDER DENYING [SECOND] MOTION FOR RECONSIDERATION (Doc. 41)

THIS MATTER is before the Court on Mr. Provencio-Sandoval's [*Second*]¹ *Motion for Re-consideration* (Doc. 41), filed on January 25, 2010. In his motion, Mr. Provencio-Sandoval asks the Court to reconsider its April 17, 2009 decision to deny him pro bono counsel.² Mr. Provencio-Sandoval's claims under 28 U.S.C. § 2255 have been denied and this case has been dismissed. See *Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition* (Doc. 29) (Doc. 32) and *Judgment* (Doc. 33) filed December 7, 2009. On December 31, 2009, Mr. Provencio-Sandoval appealed this Court's decision to the Tenth Circuit Court of Appeals. To the extent Mr. Provencio-Sandoval is requesting appointment of counsel for proceedings in this Court, his request is moot because this Court no longer has jurisdiction over his

¹Mr. Provencio-Sandoval filed his first *Motion for Reconsideration* (Doc. 10) pertaining to this same issue on April 27, 2009.

²Mr. Provencio-Sandoval appears to dispute the Court's interpretation of his request for pro bono assistance as a motion for appointment of counsel, and states that he "understood that pro bono meant free of charge, not to him, nor the [C]ourt." *Document 41* at 1. A request made to the Court for pro bono assistance is the equivalent of a motion for appointment of counsel because providing counsel is the means by which the Court can provide pro bono assistance to *pro se* parties who meet certain criteria. As the Court has already explained to Mr. Provencio-Sandoval, there is no constitutional right to court-appointed counsel in a civil case, and Mr. Provencio-Sandoval does not present reasons to justify appointment of counsel. See *Order Denying Motion for Reconsideration* (Doc. 23) at 1-2 and *Order Denying Motion for Appointment of Counsel* (Doc. 7) at 1 (citations omitted).

claims. To the extent he is requesting appointment of counsel for his appeal, that is a matter within the jurisdiction of the Tenth Circuit Court of Appeals. Accordingly, the Court **FINDS** that the motion is not well-taken and should be **DENIED**.

IT IS THEREFORE ORDERED that Mr. Provencio-Sandoval's *[Second] Motion for Re-consideration* (Doc. 41) is **DENIED**.

IT IS SO ORDERED.

Lourdes A. Martinez

LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE